



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2022-0826]

RIN 1625-AA09

Drawbridge Operation Regulation; Hackensack River, Jersey City, NJ

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily modifying the operating schedule that governs the PATH Bridge across the Hackensack River, mile 3.0, at Jersey City, New Jersey. This action is necessary to allow for an unexpected delay in material delivery related to COVID-19 pandemic. This temporary final rule is necessary to allow the bridge owner to complete the remaining replacements and repairs.

DATES: This temporary final rule is effective 12:01 a.m. on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through 12:01 a.m. on March 23, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type the docket number (USCG-2022-0806) in the “SEARCH” box and click “SEARCH”. In the Document Type column, select “Supporting & Related Material”.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Judy Leung-Yee, Bridge Management Specialist, U.S. Coast Guard; telephone: 212-514-4336, e-mail: Judy.K.Leung-Yee@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of proposed rulemaking
Pub. Law	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable.

On March 24, 2022, the Coast Guard issued a General Deviation for 180 days which allowed the bridge owner to deviate from the current operating schedule in 33 CFR 117.732(b) to repair the bridge. This deviation letter can be found in this Docket as supporting documentation. Due to delays in procuring materials for replacement of the bridge control system the project ran past the allotted 180 days. The work cannot stop and needs to continue in order to bring the bridge back to normal operation. Therefore, there is lack of sufficient time to provide a reasonable comment period and then consider those comments before issuing the modification.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective in less than 30 days after publication in the Federal Register. For reasons presented above, delaying the effective date of this rule would be impracticable and contrary to the public interest given the need to complete repairs to the bridge which

are already underway and preventing full operation.

III. Legal Authority and Need for the Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Coast Guard is modifying the operating schedule that governs the PATH Bridge across Hackensack River, mile 3.0, at Jersey City, New Jersey. The PATH Bridge is a vertical lift bridge offering mariners a vertical clearance of 40 feet at mean high water and 45 feet at mean low water in the closed position.

The existing drawbridge regulations are listed at 33 CFR 117.723(b). The Port Authority Trans-Hudson Corporation, the bridge owner, has requested this modification as additional time is required to complete replacement of control system as described above.

The waterway is transited by seasonal recreational traffic as well as commercial vessels, largely tug and barge combinations. The 40-foot vertical clearance while the bridge is in the closed position offers the bulk of commercial traffic sufficient room to transit under the bridge. Coordination with known waterway users has indicated no objection to the proposed schedule of the draw. Vessels that can pass under the bridge without an opening may do so at all times. The bridge will be able to open for emergencies. There is no immediate alternate route for vessels unable to pass through the bridge when in the closed position.

IV. Discussion of the Rule

The Coast Guard is issuing this rule, which permits a temporary deviation from the operating schedule that governs the PATH Bridge across Hackensack River, mile 3.0, at Jersey City, New Jersey. The rule is necessary to accommodate the completion of replacement of control system. This rule allows the bridge to open on signal provided a minimum of twenty-four (24) hours advance notice is given, and need not open for the

passage of vessel traffic on weekdays Monday through Friday from 6 a.m. to 10 a.m. and from 3 p.m. to 7 p.m. from November 6, 2022, to March 22, 2023.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act

of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities

between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security

Delegation No. 0170.1.

2. Amend § 117.723 as follows:

- a. Stay paragraph (b).

- b. Add paragraph (l).

The addition reads as follows:

§ 117.723 Hackensack River.

* * * * *

(l) The draw of the PATH Bridge, mile 3.0, at Jersey City, shall open on signal provided at least a twenty-four (24) hour advance notice is provided by calling the U.S. Coast Guard Vessel Traffic Service (VTS) at 718-514-4088 or Port Authority Trans-Hudson, John Burkhard, at 201-410-4260 to coordinate a transit time that is mutually acceptable for commercial river users to pass under the bridge. The draw need not open for the passage of vessel traffic on weekdays Monday through Friday, except Federal holidays, from 6 a.m. to 10 a.m. and from 3 p.m. to 7 p.m.

Dated: November 2, 2022.

J. W. Mauger,
Rear Admiral, U.S. Coast Guard,
Commander, First Coast Guard District.